

EARL CHANCELLOR

IBLA 76-242

Decided March 1, 1976

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM-A 9227 (Okla.).

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated because of failure to pay rental timely, may be reinstated only where it is shown that such failure was either justifiable or not due to a lack of reasonable diligence. The burden of satisfying either of those criteria rests upon appellant.

2. Oil and Gas Leases: Reinstatement

Reasonable diligence requires that the payment be sent sufficiently in advance of the due date to account for normal delays in handling and delivery of the mails. Absent reasonable diligence, a lease may be reinstated if the delay was justifiable. This generally envisages factors beyond appellant's control, which were the proximate cause of the failure to pay timely. Thus, proximity in time and causality of the untoward occurrence are essential elements required to be shown.

APPEARANCES: Earl Chancellor, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Earl Chancellor has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease NM-A 9227 (Okla.).

The rental was due and payable not later than May 1, 1975, a Thursday. The envelope containing the payment was postmarked May 2, 1975, and was received by BLM on May 5, 1975. Since timely payment was not received, the lease terminated by operation of law. 30 U.S.C. § 188 (1970).

In his petition for reinstatement, appellant stated that making the rental payments "is usually taken care of by my wife. Due to her illness this was overlooked, but we did mail our check number 7555, dated 5-2-75 for this years [sic] rental."

Appellant in his Statement of Reasons further states:

We feel that in addition to the reasons so stated that we have been prompt in meeting the obligations, and the person responsible for taking care of this matter was in the hospital at the time and simply did not remember that this lease payment was due until May 2, at which time the check was mailed.

[1] An oil and gas lease, terminated because of failure to pay rental timely, may be reinstated only where it is clearly shown that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). The burden of establishing either of those criteria rests upon appellant. Louis Samuel, 8 IBLA 268 (1972), aff'd, Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Calif., August 26, 1974).

[2] Reasonable diligence requires that the payment be sent sufficiently in advance of the due date to account for normal delays in handling and delivery of the mails. Louis Samuel, supra. Absent reasonable diligence, a lease may be reinstated if the delay was justifiable. This generally envisages factors beyond appellant's control which were the proximate cause of the failure to pay timely. R. G. Price, 8 IBLA 290 (1972). Thus, proximity in time and causality of the untoward occurrence are essential elements required to be shown. In the case at bar, we recognize that appellant's wife usually took care of the rental payments, made previous payments timely, and that she was in the hospital on or about the date payment was due. She did not remember until May 2, 1975, that rental was due on May 1, 1975. However, appellant has failed to demonstrate that his

wife, during her stay in the hospital, was so incapacitated as not to be reasonably able to attend to normal business matters. Cf. David Kirkland, 19 IBLA 305 (1975), where the petitioner's secretary was seriously injured and in a hospital under sedatives on and before the due date. In Ada P. Lundgren, 17 IBLA 132 (1974), it was held that a debilitating and incapacitating illness and the age (69) of the wife rendered the failure to pay timely "justifiable." There is nothing in this record to establish an incapacitating and debilitating illness. Mere illness on or about the due date for payment is not a sufficient predicate for us to find that the failure to pay timely was "justifiable." See Louis Samuel, supra at 274, 276, 277, 279. We therefore are impelled to the conclusion that appellant's failure to pay the rental timely is not shown to be justifiable or in the exercise of reasonable diligence.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

